

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

FILED

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METROPOLITAN LIFE
INSURANCE COMPANY

Plaintiff,

v.

MONTANA L. AUSTIN, a minor,
CASIDI M. DAVIS, a minor,
ANGEL S. ETHRIDGE, a minor,
CATIEANNE M. JAMES, a minor, and
SHARON DENISE JAMES

Defendants.

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEPT. CLERK

No. 1:05-cv-123

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AMENDED MEMORANDUM AND ORDER

This amended memorandum opinion and order completely supersedes and supplants the memorandum opinion and order previously entered on April 7, 2005. [Court Doc. No. 36].

This is an interpleader action under Rule 22 of the Federal Rules of Civil Procedure. Plaintiff Metropolitan Life Insurance Company ("MetLife") brings this action under the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001, *et seq.* MetLife invokes the Court's subject matter jurisdiction pursuant to 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331.

MetLife joined all of the defendants because MetLife believes it is faced with competing and conflicting claims to certain life insurance benefits under the General Motors Corporation Life and Disability Benefits Program (the "Plan"), an ERISA-covered employee group

life insurance plan insuring the life of Richard F. Witkowski, deceased. The ERISA Plan is funded through a group life insurance policy issued by MetLife to the General Motors Corporation, the former employer of the late Richard F. Witkowski. MetLife is the claims fiduciary for the Plan.

MetLife deposited a total of \$14,296.62 into the Registry of the Court under Fed. R. Civ. P. 67 and E.D.TN. LR 67.1 for payment and disbursement to the party or parties who are ultimately determined and adjudicated by the Court to be the proper beneficiary or beneficiaries of the life insurance proceeds. [Court Doc. No. 21]. The \$14,296.62 constitutes the basic life insurance benefit in the amount of \$14,138.00 plus \$158.62 in accrued interest. On October 27, 2005, defendant Sharon Denise James made a motion [Court Doc. No. 24] for the payment and disbursement of the life insurance benefits to her contending that she is the sole beneficiary. The Court referred the motion to Magistrate Judge Susan K. Lee for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). [Court Doc. No. 25].

Magistrate Judge Lee appointed attorney John M. Higgason, Jr., Chattanooga, Tennessee, as guardian *ad litem* for the minor defendants pursuant to Fed. R. Civ. P. 17(c), and held an evidentiary hearing. On March 22, 2006, Magistrate Judge Lee filed her report and recommendation. [Court Doc. No. 33]. The parties do not have any objections to the report and recommendation. [Court Doc. No. 35].

After reviewing the record, the Court **ACCEPTS and ADOPTS** the Magistrate Judge's report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). The Court finds that Richard F. Witkowski died on January 17, 2005. At the time of his death, Richard F. Witkowski was enrolled in the ERISA Plan and his basic life insurance benefits were \$14,138.00. During his lifetime, the insured, Richard F. Witkowski, executed a valid designation of

beneficiary form dated November 20, 2004, designating his stepdaughter, Sharon Denise James, as the sole (100%) primary beneficiary of the life insurance benefits under the policy. This is the most recent designation of beneficiary executed by Richard F. Witkowski prior to his death. Consequently, the four minor defendants in this case, Montana L. Austin, Casidi M. Davis, Angel S. Ethridge, and Catienne M. James, do not have any legal interest in, and are not entitled to any portion of, the life insurance proceeds. Accordingly, the motion by defendant Sharon Denise James for payment of the life insurance proceeds to her as the sole beneficiary [Court Doc. No. 24] is **GRANTED**.

MetLife has submitted a bill of costs and costs have been taxed in favor of MetLife in the amount of \$250.00. [Court Doc. No. 27]. Furthermore, guardian *ad litem* John M. Higgason, Jr. has filed an application for the award of reasonable attorney's fees to him in the amount of \$1,628.25 [Court Doc. No. 32] which application is **GRANTED**.

Pursuant to 28 U.S.C. § 2042, Fed. R. Civ. P. 67 and E.D.TN. LR 67.1E, the Clerk of this Court is hereby **AUTHORIZED and DIRECTED** to draw checks on said \$14,138.00 currently on deposit in the Registry of this Court. and to disburse the following amounts to the following payees:

1. Court costs in the amount of **\$250.00** shall be disbursed by a check made payable to Metropolitan Life Insurance Company. The check for \$250.00 shall be mailed or otherwise delivered to MetLife's counsel of record, attorney Kenneth P. Jones, Bourland, Heflin, Alvarez & Minor, PLC, 5400 Poplar Avenue, Suite 100, Memphis, TN 38119.

2. Reasonable attorney's fees in the amount of **\$1,628.25** shall be disbursed by a check made payable to John M. Higgason, Jr. The check for \$1,628.25 shall be mailed or otherwise delivered to John M. Higgason, Jr., Attorney at Law, 713 Cherry Street, Chattanooga, TN 37402.

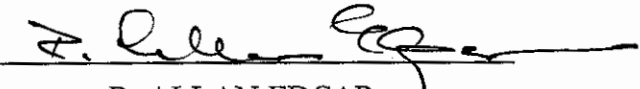
3. The remaining balance of **\$12,418.37** shall be disbursed by a check made co-payable to Sharon Denise James and D. Mitchell Bryant. The check for \$12,418.37 shall be mailed or otherwise delivered to D. Mitchell Bryant, Attorney at Law, P.O. Box, 1012, Cleveland, TN 37364-1021.

To effect these disbursements by the Clerk of the District Court, payees Metropolitan Life Insurance Company, John M. Higgason, Jr., Sharon Denise James, and D. Mitchell Bryant shall each provide the Clerk of Court, or her designated financial deputy clerk, with their respective taxpayer identification numbers and/or Social Security numbers as required by E.D. TN LR 67.1E(2).

All claims and causes of action having been adjudicated, this civil action shall be **DISMISSED WITH PREJUDICE** and the Clerk of Court shall close the record in this case. The Clerk of Court shall enter a final amended judgment in accordance with this memorandum opinion and order.

SO ORDERED.

ENTER this ____ day of April, 2006.


R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE